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and 217.66 of this chapter must be implemented. These mitigation measures include (but are not limited to):

(1) All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries (e.g., Point Sal, Purisima Point, Rocky Point), except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting), which may require approaching pinniped haul-outs and rookeries closer than 1,000 ft (305 m).

(2) For missile and rocket launches, holders of Letters of Authorization must avoid, whenever possible, launches during the harbor seal pupping season of March through June, unless constrained by factors including, but not limited to, human safety, national security, or for space vehicle launch trajectory necessary to meet mission objectives.

(3) Vandenberg Air Force Base must avoid, whenever possible, launches which are predicted to produce a sonic boom on the Northern Channel Islands during harbor seal, elephant seal, California sea lion, and northern fur seal pupping seasons of March through June.

(4) If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred, the launch procedure and the monitoring methods must be reviewed, in cooperation with the National Marine Fisheries Service (NMFS), and appropriate changes must be made through modification to a Letter of Authorization, prior to conducting the next launch under that Letter of Authorization.

(5) *Delta Mariner* (or a similar vessel) operations, cargo unloading, and harbor maintenance dredging measures:

(i) If activities occur during nighttime hours, turn on lighting equipment before dusk. Lights must remain on for the entire night to avoid startling pinnipeds.

(ii) Initiate operations before dusk.

(iii) Keep construction noises at a constant level (i.e., not interrupted by periods of quiet in excess of 30 minutes) while pinnipeds are present.

(iv) Initiate a gradual start-up of activities to ensure a gradual increase in noise levels if activities cease for

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longer than 30 minutes and pinnipeds are in the area.

(v) Conduct visual monitor, by a qualified observer, of the harbor seals on the beach adjacent to the harbor and on rocks for any flushing or other behaviors as a result of activities described in §217.60(a).

(vi) The *Delta Mariner* and accompanying vessels must enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks; reducing speed to 1.5 to 2 knots (1.5–2 nm/hr; 2.8–3.7 km/hr) once the vessel is within 3 mi (4.83 km) of the harbor. The vessel must enter the harbor stern first, approaching the wharf and moorings at less than 0.75 knot (1.4 km/hr).

(vii) Explore alternate dredge methods and introduce quieter techniques and equipment as they become available.

(6) Additional mitigation measures as contained in a Letter of Authorization.

(b) [Reserved]

§217.65 Requirements for monitoring and reporting.

(a) Unless specified otherwise in the Letter of Authorization, the USAF must notify the Administrator, West Coast Region, NMFS, by letter or telephone, at least 2 weeks prior to activities possibly involving the taking of marine mammals. If the authorized activity identified in §217.60(a) is thought to have resulted in the mortality or injury of any marine mammals or in any take of marine mammals not identified in §217.62(c), then the USAF must notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301–427–8401), within 48 hours of the discovery of the injured or dead animal.

(b) To conduct monitoring of launch activities, the USAF must designate qualified, on-site individuals approved in advance by NMFS, as specified in the Letter of Authorization, to:

(1) Conduct observations on pinniped activity in the vicinity of the rookery nearest the launch platform or, in the absence of pinnipeds at that location, at another nearby haul-out, for at least 72 hours prior to any planned launch occurring during the harbor seal pupping season (1 March through 30 June) and continue for a period of time

not less than 48 hours subsequent to launching.

(2) For launches during the harbor seal pupping season (March through June), conduct follow-up surveys within 2 weeks of the launch to ensure that there were no adverse effects on any marine mammals.

(3) Monitor haul-out sites on the Northern Channel Islands, if it is determined by modeling that a sonic boom of greater than 1 psf is predicted to impact one of the Islands between March 1 and June 30, greater than 1.5 psf between July 1 and September 30, and greater than 2 psf between October 1 and February 28. Monitoring will be conducted at the haul-out site closest to the predicted sonic boom impact area.

(4) Investigate the potential for spontaneous abortion, disruption of effective female-neonate bonding, and other reproductive dysfunction.

(5) Supplement observations on Vandenberg and on the Northern Channel Islands with video-recording of mother-pup seal responses for daylight launches during the pupping season.

(6) Conduct acoustic measurements of those launch vehicles that have not had sound pressure level measurements made previously, and

(7) Include multiple surveys each day that surveys are required that record the species, number of animals, general behavior, presence of pups, age class, gender and reaction to launch noise, sonic booms or other natural or human caused disturbances, in addition to recording environmental conditions such as tide, wind speed, air temperature, and swell.

(c) To conduct monitoring of harbor activities, the USAF must designate qualified, on-site individuals approved in advance by NMFS, as specified in the Letter of Authorization. During nighttime activities, the harbor area will be illuminated, and the observer will use a night vision scope. Monitoring activities will consist of the following:

(1) Conducting baseline observation of pinnipeds in the project area prior to initiating project activities.

(2) Conducting and recording observations on pinnipeds in the vicinity of the harbor for the duration of the ac-

tivity occurring when tides are low enough (less than or equal to 2 ft (0.61 m) for pinnipeds to haul out.

(3) Conducting post-construction observations of pinniped haul-outs in the project area to determine whether animals disturbed by the project activities return to the haul-out.

(d) Holders of Letters of Authorization must conduct additional monitoring as required under a Letter of Authorization.

(e) The USAF must submit a report to the West Coast Regional Administrator, NMFS, within 90 days after each launch. This report must contain the following information:

(1) Date(s) and time(s) of the launch,
(2) Design of the monitoring program, and

(3) Results of the monitoring program, including, but not necessarily limited to:

(i) Numbers of pinnipeds present on the haul-out prior to commencement of the launch,

(ii) Numbers of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have entered the water as a result of launch noise,

(iii) The length of time pinnipeds remained off the haul-out or rookery,

(iv) Numbers of pinniped adults, juveniles or pups that may have been injured or killed as a result of the launch, and

(v) Behavioral modifications by pinnipeds that were likely the result of launch noise or the sonic boom.

(f) An annual report must be submitted on March 1 of each year.

(g) A final report must be submitted at least 180 days prior to expiration of these regulations. This report will:

(1) Summarize the activities undertaken and the results reported in all previous reports,

(2) Assess the impacts at each of the major rookeries,

(3) Assess the cumulative impacts on pinnipeds and other marine mammals from the activities specified in § 217.60(a), and

(4) State the date(s), location(s), and findings of any research activities related to monitoring the effects on launch noise, sonic booms, and harbor

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activities on marine mammal populations.

§ 217.66 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the USAF must apply for and obtain a Letter of Authorization.

(b) A Letter of Authorization, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If a Letter of Authorization expires prior to the expiration date of these regulations, the USAF must apply for and obtain a renewal of the Letter of Authorization.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by a Letter of Authorization, the USAF must apply for and obtain a modification of the Letter of Authorization as described in § 217.67.

(e) The Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (i.e., mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the Letter of Authorization shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of a Letter of Authorization shall be published in the FEDERAL REGISTER within 30 days of a determination.

§ 217.67 Renewals and modifications of Letters of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 217.66 of this chapter for the activity identified in § 217.60(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regu-

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lations (excluding changes made pursuant to the adaptive management provision in § 217.67(c)(1) of this chapter), and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous Letter of Authorization under these regulations were implemented.

(b) For Letter of Authorization modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in § 217.67(c)(1)) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed Letter of Authorization in the FEDERAL REGISTER, including the associated analysis illustrating the change, and solicit public comment before issuing the Letter of Authorization.

(c) A Letter of Authorization issued under § 216.106 and § 217.66 of this chapter for the activity identified in § 217.60(a) may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with the USAF regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in a Letter of Authorization:

(A) Results from the USAF's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

(ii) If, through adaptive management, the modifications to the mitigation,